

Town of Whitby

Staff Report

whitby.ca/CouncilCalendar



Report Title: Proposed Amendments to the Noise By-law

Report to: Committee of the Whole

Date of meeting: September 23, 2024

Report Number: LS 13-24

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

For additional information, contact:

Andre Gratton, Sr. Manager of
Enforcement Services

1. Recommendation:

1. That Report LS 13-24 be received for information.
2. That the proposed amendments to the Town's Noise By-law #6917-14 as appended to Report LS13 24 as Attachment # 1 be brought forward to Council for consideration.

2. Highlights:

- The Town's Noise By-law # 6917-14 was adopted in 2017 and is a qualitative style by-law which prohibits certain general and defined noise after a certain time of day, i.e. no noise generally after 9:00p.m.
- The Town's Noise By-law # 6917-14 has been amended on two occasions to improve its enforcement and to better serve the community.
- Staff completed a substantial review of the Noise by-law in 2021 and 2022 which produced Reports [LS 11-20](#), [LS 05-22](#) and [LS 03-23](#).
- Staff have implemented several operational changes to improve noise response which included the implementation of Enforcement Services Officers (ESOs) in July 2023.

- The current language in the Enforcement and Penalties section limits Enforcement Services' ability to file Part III charges before the Ontario Court of Justice and requires amending.
- Staff also seek to amend the by-law to broaden the definition of "point of reception" to address concerns that have arisen from enforcement.

3. Background:

Staff continue to utilize the technology and tools available to enforce noise infractions

The Town of Whitby's Noise By-law # 6917-14 (the "**Noise By-law**") is a qualitative/objective style by-law that sets out prohibited types of noise that infringe on the reasonable enjoyment of others (e.g., the playing of instruments at such a volume that it is audible from the interior of a residence or business whose occupant has made every reasonable attempt to mitigate the reception of the noise). In addition, the Noise By-law contains restrictions on times at which certain noise is prohibited in residential and other areas (e.g. no music from musical instruments after 9:00 p.m.).

Currently, as a requirement of the Town's prosecutions and the Ontario Court of Justice, residents are required to log their observation of alleged Noise By-law infractions and attend the hearing of the infraction in court to give testimony. This process is similar to noise infractions in other municipalities in Durham Region.

Since 2022, Enforcement Services has taken the lead on gathering observations when noise complaints are received, where operationally feasible, to limit the need for residents to gather such observations and attend court to enforce the complaint. This lead role was increased by the implementation of Enforcement Services Officers in 2023 who regularly work overnights and can best respond to alleged noise violations afterhours.

To increase response as result of the needs of the community, staff implemented an after-hours auto-attendant in August 2024 that connects residents with an ESO on duty. Similar initiatives in previous years to address noise complaints were reasonably successful but were paused due to staffing challenges the Enforcement Services faced in previous years.

Charges under Part III of the *Provincial Offences Act*

Part III proceedings under the *Provincial Offences Act*, RSO 1990, P.33, as amended, involve more serious offences for which charges are laid through a sworn document called an "Information" and must be brought before a justice of the peace for a hearing. Part III proceedings can also result in the issuance of arrest warrants and more severe penalties (e.g., probation orders or imprisonment). In the Town, Part III offences may be laid for certain *Municipal Act, 2001* and *Planning Act* by-law contraventions, including noise, site alteration, and zoning offences.

Part III charges differ from Part I (minor offences) and Part II (parking offences) charges in that Parts I and II charges can be resolved through the payment of a set fine, which is usually less than the fine for Part III charges.

4. Discussion:

The Town has experienced challenges prosecuting Noise By-law charges under Part III of the *Provincial Offences Act*

Through a recent prosecution, staff were advised that the Enforcement and Penalties section of the Town's Noise By-law 6917-14 requires amendments to address laying of noise by-law charges under Part III of the *Provincial Offences Act*. The current language limits Enforcement Services ability to file Part III charges before the Ontario Court of Justice. Section 6.2 of The Enforcement and Penalty Section currently states:

Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a penalty as provided by the Municipal Act.

The above language is a challenge to enforce under a Part III charge, as the *Municipal Act, 2001*, does not have a penalty section but rather gives jurisdiction for the municipal by-law to establish a system of fines within the by-law provisions (see below). Unfortunately, the Town's Noise By-law #6917-14, as amended, does not contain a system of fines.

Section 429 of the Municipal Act provides the authority for the Town to establish a system of fines for offences under a by-law with the restrictions as set out in section 429(3).

Staff recommend that Section 6.2 of the Town's Noise By-law # 6917-14, as amended, be further amended to reference the general penalty section in the Provincial Offences Act s. 61 for Part III charges to a maximum fine of \$5,000 (see **Attachment # 1**). \$5,000 is the maximum fine permitted under Part III of the *Provincial Offences Act*.

Enforcement Services staff have had challenges tracking noise under the current definition of "point of reception"

In addition to the above, staff have identified language within the by-law which limits Enforcement Services staff action and take the lead on making noise observations. The language within the definition of "point of reception" implies observations are taken by a resident.

"point of reception" means any point on the premises of a person where noise, originating from other than those premises, is received;

Staff recommend the definition of a "point of reception" be amended to allow Officers to use their own discretion from a neutral area such as a nearby Park or Highway as a point of reception to determine, or to use a particular property as a point of reception. This amendment will assist Enforcement Services lead on alleged Noise By-law contraventions.

5. Financial Considerations:

N/A

6. Communication and Public Engagement:

N/A

7. Input from Departments/Sources:

N/A

8. Strategic Priorities:

This report generally advances Strategic Pillar 1: Whitby's Neighbourhoods, Objective 1.1: Improve community safety, health and well-being, Action 1.1.3: Identify opportunities to improve response to disruptive noise which affects the health and well being of the community and its residents.

This report also advances Strategic Pillar 4: Whitby's Government, Objective 4.3: Deliver exceptional customer service and community engagement, Action 4.3.1: 4.3.1 Continually improve the customer experience through the use of technology, more flexible payment and service options, and the implementation of a consolidated customer contact centre. Enforcement services is utilizing technology to create a simple and efficient way for residents to report noise disturbances and improve response by Enforcement Service to after-hours noise concerns.

9. Attachments:

Attachment # 1- Draft By-law - Proposed amendments to the Noise By-law # 6917-14, as amended.